

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1097.

93

THE CLERKS' INVESTMENT COMPANY, WILLIAM H. BUTLER, DENNIS W. MAGRATH, CLARENCE E. LATIMER, JOSEPH C. RINGWALT, JAMES T. GIBBS, PERCY METZGER, WILLIAM H. VEERHOFF, AND CHARLES H. FRANZONI, OFFICERS AND DIRECTORS OF THE CLERKS' INVESTMENT COMPANY, APPELLANTS,

vs.

MARY C. SYDNOR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 15, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1901.

No 1097.

THE CLERKS' INVESTMENT COMPANY, WILLIAM H. BUTLER, DENNIS W. MAGRATH, CLARENCE E. LATIMER, JOSEPH C. RINGWALT, JAMES T. GIBBS, PERCY METZGER, WILLIAM H. VEERHOFF, AND CHARLES H. FRANZONI, OFFICERS AND DIRECTORS OF THE CLERKS' INVESTMENT COMPANY, APPELLANTS,

vs.

MARY C. SYDNOR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Captcn	<i>a</i>	1
Bill	1	1
Exhibit No. 1—Constitution	7	4
Answer of William Butler <i>et al</i>	13	8
Decree appointing trustees	25	15
Petition for rehearing.....	27	16
Petition for rehearing denied.....	34	19
Appeal and citation ordered.....	34	19
Citation	35	20
Memorandum: Appeal bond filed	36	20
Clerk's certificate	37	21

In the Court of Appeals of the District of Columbia.

THE CLERKS' INVESTMENT COMPANY ET AL., Appellants, }
vs. } No. 1097.
MARY C. SYDNOR.

a Supreme Court of the District of Columbia.

MARY C. SYDNOR
vs.
CLERK'S INVESTMENT COMPANY, WIL-
liam H. Butler, Dennis W. Magrath,
Clarence E. Latimer, Joseph C. Ring-
walt, James T. Gibbs, Percy Metzger,
William H. Veerhoff, and Charles H.
Franzoni, Officers and Directors of
the Clerks' Investment Company. } No. 21827. In Equity.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

Be it remembered that in the supreme court of the District of Co-
lumbia, at the city of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had in the above-entitled cause, to wit:

1 *Original Bill.*

Filed October 24, 1900.

In the Supreme Court of the District of Columbia, Holding a Special
Term in Equity.

MARY C. SYDNOR, Complainant,
vs.
CLERK'S INVESTMENT COMPANY, WILLIAM H.
Butler, Dennis W. Magrath, Clarence E.
Latimer, Joseph C. Ringwalt, James T.
Gibbs, Percy Metzger, William H. Veerhoff,
and Charles H. Franzoni, Officers and Di-
rectors of the Clerks' Investment Company,
Defendants. } Equity. No. 21827.

To the supreme court of the District of Columbia, holding a special
term in equity:

The complainant, Mary C. Sydnor, is a citizen of the United States
and a resident of the District of Columbia, and brings this her bill

of complaint on her own behalf, as a stockholder in the Clerks' Investment Company, and on behalf of all other stockholders of like character to that owned by her, as hereinafter described, who may come into this cause and contribute to the costs thereof.

2. The complainant further says that the Clerks' Investment Company above named is an unincorporated association existing in and doing business in the District of Columbia, and all the individuals above named as defendants are the directors of said unincorporated company. The said William H. Butler is also president thereof; Percy Metzger is secretary thereof, and Clarence E. Latimer is treasurer thereof. They, the said officers, by virtue of their positions, constitute, with the other defendants, a board of directors, as aforesaid, and they are sued as representing the said company and its interests, the number of stockholders therein being very great, and it being practically impossible to make them all defendants hereto.

3. Complainant further shows that the Clerks' Investment Company aforesaid was organized March 22, 1892, under a constitution, a copy of which is herewith filed, marked "Exhibit No. 1," and it is prayed to be read as a part hereof. The said constitution provides in substance, *inter alia*, that the shares of stock shall not exceed two hundred and fifty, of the par value of \$180.00, to be paid for in instalments of \$5.00 per month, but certificates of stock were to be issued to members on the signing of said constitution and the payment of twenty-five cents initiation fee. The funds so realized from sales of stock to be invested in real estate within the District of Columbia for the mutual benefit of its stockholders.

4. And complainant further says that on or about the 7th day of April, 1892, she became a member of said company and purchased two shares of stock in the same, and afterward paid therefor the full amount of \$180.00 per share in monthly instalments of \$5.00, as required by the constitution of said company, and on information and belief she avers that the total number of shares sold to divers persons was one hundred and eighty, and that the sum of \$23,870.00 was paid thereon by the purchasers thereof.

3 5. Complainant further says that the said money was invested in real estate by said company, as provided by said constitution, and she verily believes that the parcels of real estate now held by it are as follows:

Sq. 891, lots 34, 5, 8th street between F and G N. E.

Sq. 986, lots 8, 9, 10, 11th & D streets N. E.

Sq. 860, lots 86 to 90, 6th and Morris place N. E.

And complainant further says that by the terms of said constitution, as will appear upon reference thereto, it was provided that the organization of said company should be for a term of three years, and that any member wishing to withdraw therefrom after one year should be entitled to receive from said company the full amount paid in, with interest at four per cent., less his *pro rata* of expense accrued; and she further says that heretofore, at divers times within the past year, she has made demands upon said company, through

its proper officers, for payment to her upon the basis of such provisions, but no payment has been made to her, and on information and belief she charges that other stockholders have made similar demands and have been similarly refused, and she verily believes, and so avers, that said company is wholly unable to comply with the said provisions of the said constitution.

6. And complainant further says that it is provided by said constitution that the secretary shall every three months present to the board of directors a full and complete report of the assets and liabilities of the company; that the board of directors shall meet every three months, and that the auditing committee shall examine the books and papers of the secretary and treasurer once every three months and submit to the board of directors at their next
4 meeting a full and detailed statement thereof, but complainant says on information and belief that the secretary of the company has not made reports as required by the constitution, and that the board of directors have not met quarterly, but only at great intervals of time, and that the auditing committee has not made quarterly examinations of the books; that the affairs of said company have been neglected.

7. Complainant is advised and believes, and so avers, that by reason of the premises and because the term of organization of said company has been fully ended she is entitled, as a stockholder therein, to have the affairs of said company settled, the assets converted into money and distribution thereof made under the direction of this court. Wherefore she prays as follows:

1. That the writ of subpoena may issue, directed to the said defendants, William H. Butler, Clarence E. Latimer, Charles G. Ringwalt, James T. Gibbs, Percy Metzger, William H. Veerhoff, Charles H. Franzoni, and Dennis W. Magrath, requiring them to appear and make answer hereto on behalf of the said Clerks' Investment Company as truly, fully, and particularly as if fully interrogated in respect of each of the matters alleged, though not under oath or affirmation, the oath to such answer being hereby expressly waived.

2. That a receiver or receivers be appointed with power and authority to demand, sue for, collect, receive, and take into his or their possession all the goods, chattels, rights, credits, moneys and effects, lands and tenements, books, papers, and property of
5 every description belonging to the said Clerks' Investment Company, and that all such property may be sold and converted into money under the direction of this court.

3. That the liabilities of said company may be determined and its affairs settled under the direction of this court; that after payment of such liabilities and the proper expenses of this cause the assets of said company and the proceeds of any sales thereof may be distributed among the stockholders of said company according to their respective rights.

4. That complainant may have such other and further relief as the nature of the case may require and the court has power to grant.

The defendants to this bill are The Clerks' Investment Company,

William H. Butler, Clarence E. Latimer, Joseph C. Ringwalt, James T. Gibbs, Percy Metzger, William H. Veerhoff, Charles H. Franzoni, and Dennis W. Magrath.

MARY C. SYDNOR.

A. A. BIRNEY,
S. V. HAYDEN,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, ss:

I, Mary C. Sydnor, being first duly sworn, on oath depose and say that I have read the foregoing bill by me subscribed and know the contents thereof; that the matters and things therein stated of my own knowledge are true, and those stated on information and belief I believe to be true.

MARY C. SYDNOR.

6 Subscribed and sworn to before me this 24th day of October, 1900.

[SEAL.]

WARREN C. STONE,
Notary Public, D. C.

7

"EXHIBIT No. 1."

Constitution.

ARTICLE I.

This company shall be known as the Clerks' Investment Company. The object of this company is to invest the funds of its stockholders safely and profitably in real estate within the District of Columbia for the mutual benefit of its stockholders.

ARTICLE II.

The number of shares of stock in this company shall not exceed two hundred and fifty (250). The par value of each share shall be one hundred and eighty (180) dollars, and the payments thereon shall be at the rate of five (5) dollars per month, and in default of such payment within seven (7) days of the regular meeting a fine of five (5) per cent. will be levied on each assessment.

ARTICLE III.

Any member thirty (30) days in arrears as to any payment shall be notified by mail or otherwise of such delinquency and of the ultimate consequences thereof, and if payment is not made within thirty days thereafter, the stock shall be sold at auction at the next regular monthly meeting of the board of directors, the stockholders to be duly notified, and the proceeds of such sale, less his indebtedness, shall be turned over to such member upon the surrender of the certificate of stock.

ARTICLE IV.

Right of membership and ownership of shares shall be acquired by those who have signed this constitution, and only to such
8 shall a duly authenticated certificate of stock, signed by the president and secretary, be issued. No transfer of stock shall be deemed valid unless entered upon the books of the company; nor shall such transfer be recorded or deemed valid until the account of the retiring stockholder shall have been settled. A new certificate of stock will be issued only upon the surrender of the old certificate and the signing of this constitution by the purchaser.

In voting, each share shall be entitled to one vote, and a majority of all votes cast shall be necessary for an election provided, however, that a majority of all shares are represented either in person or by proxy. Shareholders may vote by proxy, duly authorized in writing. No shareholder in arrears shall be entitled to a vote.

ARTICLE V.

The first meeting shall be held on the first Tuesday in April, A. D. 1892, at which time the first assessment of stock shall be due. Thereafter the regular meetings of the stockholders will be held quarterly—*i. e.*, the first Tuesday in April, July, October, and January. Payments of dues must be made to the secretary on or before the first Tuesday in each month, or within seven days thereafter, otherwise such delinquent shares will be subjected to the fine provided for in article II.

ARTICLE VI.

There shall be elected annually by ballot, on the first Tuesday in April, a president, vice-president, secretary, and treasurer, who, with five others, shall constitute the board of directors, and an auditing committee of three, all of whom shall be stockholders of the company. They shall hold office until their respective successors
9 are installed. They shall be removable from office by the company for good cause appearing after reasonable notice and opportunity for defense. Vacancies in office shall be filled by the board of directors, except in the event of a vacancy in the office of treasurer, who shall be elected by the stockholders.

ARTICLE VII.

The president shall preside at all meetings of the company and of the board of directors. He shall sign all certificates of stock, and approve and be jointly responsible with the secretary for all orders drawn upon the treasurer; he shall countersign all checks, shall call special meetings of the company on a written request of ten members, and special meetings of the board of directors whenever deemed necessary. He shall, with the advice and consent of the board of directors, appoint such committees as may be necessary. He shall safely keep the bonds of the secretary and treasurer.

The vice-president shall, in the absence of the president exercise

all duties and powers of the president, and in the absence of both from any meeting of the company or of the board of directors, the secretary shall call the meeting to order, and those present shall choose a temporary presiding officer.

ARTICLE VIII.

10 The secretary shall keep accurate reports of the proceed-
ings of the company and of the board of directors, which
shall be recorded in the books provided for that purpose.
He shall make and attest all orders upon the treasurer and submit
the same for approval of the president. He shall cause all convey-
ances of the company to be recorded. He shall every three (3)
months submit a full and complete inventory of the assets and
liabilities of the company to the board of directors. At each annual
meeting he shall submit a written report of the business of the com-
pany during the previous year. He shall keep a full and correct
account between the company and its stockholders, receive all money
due the company, and immediately pay the same to the treasurer,
taking his receipt therefor. He shall give such bond and receive
such compensation as the board of directors may determine.

ARTICLE IX.

The treasurer shall receive from the secretary all money paid to
him for the company and give his receipt therefor. He shall safely
keep, in the name of the company, disburse and account for all
money, valuable papers and other effects of the company received
by him. He shall immediately upon receipt deposit in the name
of and to the credit of the company all funds received by him
11 for the company, in some bank selected by the board of di-
rectors. All money is only to be withdrawn from such bank
by his check, countersigned by the president and secretary, upon
the written order of the board of directors. He shall attend all
meetings of the company and shall at all times exhibit his books to
any stockholder when requested. He shall give such bond and re-
ceive such compensation as the board may determine.

ARTICLE X.

The board of directors shall manage the affairs of the company.
They shall make all contracts, purchases, sales, incumbrances and
lettings, and incur such obligations as may be proper and necessary
for the interests of the company; they may establish by-laws for
their government; they may declare dividends out of money in
hand and not required to meet obligations. They shall elect two
from their number to serve as trustees. They shall meet once every
three months and at such other times as the president may deem
necessary. Their quarterly meeting shall be open to the stock-
holders of the company.

ARTICLE XI.

The two trustees shall receive and hold in trust for the company the legal titles of all real estate. They shall when required by the board of directors execute all conveyances of property held in trust for the company.

ARTICLE XII.

The auditing committee shall examine the books, papers and vouchers of the secretary and treasurer at least once in every three months, and submit to the company at the regular meeting a written detailed statement thereof.

12

ARTICLE XIII.

The organization of this company shall be for three years. Any member wishing to withdraw within the first year is to receive the full amount paid in less any expense that may accrue *pro rata* to the number of shares such member may hold, and if after one year such member is entitled to receive the full amount paid in less such expense with four (4) per cent. per annum interest: Provided, that such payments do not interfere with obligations already assumed by the board of directors. All payments of dues to this company shall cease at the expiration of three years from the organization, and the officers elected for the third year shall hold office until the affairs of this company are closed up.

ARTICLE XIV.

This constitution and the by-laws of the board of directors may be amended at any regular meeting by a vote of two-thirds of the stockholders present, provided that not less than one-half of the number of shares outstanding are voted in person or by proxy. But all amendments must be presented in writing, signed by three or more stockholders, at a previous meeting; and the stockholders of the company shall be notified of the proposed amendments before any action on the same shall be taken.

Filed March 7, 1901.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

<p>MARY C. SYDNOR, Complainant, vs. CLERKS' INVESTMENT COMPANY and WILLIAM H. Butler <i>et al.</i>, Defendants.</p>	}	Equity. No. 21827.
---	---	--------------------

Answer of the defendants William H. Butler, Dennis W. Magrath,
Clarence Latimer, James T. Gibbs, Percy Metzger, William H.
Veerhoff, and Charles H. Franzoni.

1. The defendants admit the allegations of the first paragraph of complainant's bill.

2. Answering the second paragraph of said bill, the defendants admit that the Clerks' Investment Company is a voluntary, unincorporated association or partnership, existing and doing business in the District of Columbia, but they deny that all of the defendants named as directors of said company are its directors. Joseph C. Ringwalt on January 18th, 1896, disposed of his interest in the company and resigned from the board of directors, and, so far as the defendants are advised and believe, said J. C. Ringwalt has no present interest in said company. W. B. Pettus, of this city and District, has been regularly elected to fill the vacancy in the board of directors occasioned by the resignation of said Ringwalt, but said Pettus has not been made a party to this suit. Further answering, the defendants say that the board of directors of the Clerks' Investment Company is composed of nine members, and not of eight, the number of individuals made defendants to this bill as directors. The names of said directors are as follows: William H. Butler, Dennis W. Magrath, Clarence E. Latimer, James T. Gibbs, Percy Metzger, William H. Veerhoff, Charles H. Franzoni, W. B. Pettus, and R. T. Bolton, said Bolton not being a party to this suit. The defendants admit that the officers of the association are correctly named in said bill. Answering that portion of the second paragraph of said bill which alleges that the defendants "are sued as representing said company and its interests," defendants say that their power to represent said company is limited by the provisions of its constitution and by-laws, and that they have no right to deal with the affairs of said company except under the direction of its members, and are not in anywise authorized to represent said members of said association in a suit seeking the appointment of a receiver for their property. The defendants further say that the number of members in the Clerks' Investment Com-

pany is seventy-four, and that their names and addresses are shown by the books of the company in the possession of its secretary ; that said books are now and have at all times been open to the inspection of the complainant and her solicitors, and defendants deny that it is impracticable or impossible to make all members of said company parties defendant to this suit. On the contrary, they aver that said members of the company are indispensable parties to this suit, and defendants claim the benefit of their non-joinder as though the question of non-joinder had been raised by demurrer.

15 3. Answering the third paragraph of said bill, defendants say that the allegations of said paragraph are substantially correct, except that the initiation fee therein mentioned is provided for by the by-laws of the company and not by its constitution. For the purposes of this suit, however, they admit the allegations of said paragraph to be true.

4. Answering the fourth paragraph of said bill, defendants say that they admit the allegations of said paragraph so far as they set forth that complainant is a stockholder in the Clerks' Investment Company and owns and has paid for two shares of stock ; but they state that the number of outstanding shares in said company is one hundred and seventy-one (171), on which there have been payments amounting in the aggregate to twenty-four thousand one hundred and eighty-four dollars and fifty cents (\$24,184.50), or thereabout.

5. Answering the fifth paragraph of said bill, the defendants say that they admit the allegations of the fifth paragraph as to the disposition of the money arising from the sale of the stock, or, more properly speaking, the money arising from the monthly dues paid by the members of said company. They also admit that the description of the property purchased and its location is properly set forth in said paragraph. As to the allegation in said paragraph that the "organization of said company should be for a term of three years," defendants say that this is fully answered in answering the allegations of the seventh paragraph of complainant's bill ; but as to the further allegation of said fifth paragraph of

16 said bill that by the terms of the constitution of said company "any member wishing to withdraw therefrom after one year should be entitled to receive from said company the full amount paid in, with interest at four per cent., less his *pro rata* of expense accrued," defendants say that this is not a correct quotation of the said constitution, as article XIII of said constitution goes further and only confers this right "provided that such payments do not interfere with obligations already assumed by the board of directors." The defendants say that the obligations of the company have been such as not to enable the board of directors to repay to her the amount subscribed by her to the general funds of the company, as such funds have been and are now invested in the real property set forth in said fifth paragraph of complainant's bill. Defendants emphatically deny that any other members of said company besides complainant have demanded the return of the money invested by them in said company.

6. Answering the sixth paragraph of said bill, defendants deny most positively and emphatically the allegation of said paragraph "that the affairs of said company have been neglected" by the board of directors. On the other hand, they state that every provision of the constitution and by-laws of said company were fully lived up to during the term of the activity of the company, when dues were being paid and investments being made in real property, and that since the term of activity of said company has ceased, all of its dues being paid and all of its funds invested, the board of directors have held meetings whenever the interests of the company demanded. As to the allegations that "the secretary of the company has not made reports as required by the constitution" and that "the

17 auditing committee has not made quarterly examinations of the books," defendants say that since all dues have been paid

and all funds invested there has been nothing for the secretary to report, and no additional entries on the books of the company requiring the examination of the auditing committee. Defendants further say that had complainant considered the meetings of the association too infrequent the constitution provided a means by which she could have forced additional meetings at any time, but that, so far as defendants are informed and believe, she never requested of them or of any other members of the association that additional or more frequent meetings be held, but by her silence seemed to acquiesce in the course of the board of directors in this respect. The defendants further say that the physical condition of the property of the association has been carefully looked after, even to the removing of the noxious weeds growing thereon during the summer season. They also state that all taxes on the property have been paid, with the exception of the taxes for the year 1900, and that these taxes would have been paid but for the pendency of this suit, as the stockholders of the association did not care to advance money for this purpose if it was to be expended on property likely to be taken from them by a receivership. Defendants say that taxes in the past have been largely paid by funds advanced by individual members of the association upon the authority of a resolution passed at an open meeting of the members of the association; that the amount so advanced by members of the association amounts at the present time to about one thousand and ninety-five dollars (\$1,095), but that not one cent of this amount was contributed by complainant, and that complainant has never taken any active interest in the welfare of this company and the preservation of its assets.

18 7. Answering the seventh paragraph and prayers of said bill, the defendants say that the Clerks' Investment Company was formed with the purpose of enabling persons of moderate means to invest in real estate in the District of Columbia. The very end and object of its existence was to secure a profit on the money invested, and it was the idea of its members in creating it that all should work together for this common end and in this common interest. The association purchased the real estate, as set forth in the fifth paragraph of the bill, at a time when real estate in this

District had reached the height of a protracted boom and when prices were at their highest point. Shortly after these purchases the country entered upon a great financial panic and the values of local real estate were seriously and adversely affected, and the officers of the association have never been able to dispose of its property at anything like its fair value. A great number of attempts have been made so to do, however, both through the individual efforts of the board of directors and the members of the association, and by listing the property for sale with various real-estate dealers in this city, O. W. White, Abraham Fisher, and William H. Saunders being among others. Several real-estate dealers even refused to list the property on their books, stating that there was no demand for unimproved property. To have sold the property at auction would have been to sell it at probably one-half of its original cost price, but even had such a course been advisable the board of directors do not consider that they have any authority to dispose of the property in this manner without the special authority of the stockholders, which authority has never been received.

19 The defendants deny that *the* "the term of the organization of the company is fully ended," as alleged in complainant's bill. They aver that the provisions in article XIII of the constitution of the company, providing that "The organization of this company shall be for three years," refers only to its active organization for the payment of dues, but that the affairs of the company may be wound up at any time thereafter without limitation, in the sound discretion of the board of directors, subject to the will of the stockholders. As an evidence of this they refer to the further provision of article XIII of the constitution, that "All payments of dues to this company shall cease at the expiration of three years from the organization, and the officers elected for the third year shall hold office until after the affairs of the company are wound up." They also refer to the provisions of article II of the constitution, that "The par value of each share shall be one hundred and eighty (180) dollars, and the payments thereon shall be at the rate of five (5) dollars per month," it being very clear that at the rate of five-dollar monthly dues it would require just the period of three years for the shares to reach maturity. At the expiration of three years, it is equally clear, there would be an uninvested fund in the hands of the officers of the company derived from the last payment of dues, and defendants do not believe that it is the intention of the constitution that this fund should be immediately paid back to the stockholders, but they aver that this fund was to be then invested with the object of future profit, which profit could not possibly accrue until some time after the investment was made, and consequently until some time after

20 the lapse of the three years' limitation referred to in article XIII of the constitution.

Further answering, defendants refer to the provisions of article VI of the constitution, that the board of directors "shall be removable from office by the company for good cause appearing," and to the provision of article VII that the president of the association

"shall call special meetings of the company on the written request of ten members," and to the provision of article XIV of the constitution, that "this constitution and the by-laws of the board of directors may be amended at any regular meeting by a vote of two-thirds of the stockholders present, providing that not less than one-half of the number of shares outstanding are voted in person or by proxy." They aver that under these provisions of the constitution the board of directors of the association have been at all times and are now subject to the will of the stockholders of the company, and that if said stockholders were dissatisfied with the manner in which the affairs of the company were conducted it has always been in the power of said stockholders to rectify their errors and to direct that the affairs of the company be conducted along whatever line they saw fit. The defendants say that their course in the management of the affairs of the company has been with the full knowledge and approval of its stockholders, and that the stockholders, with the exception of complainant, have never desired that the property of the association should be sold at a loss, but have deemed the action of the board of directors in holding the property until it could be disposed of to advantage as wise and proper.

Further answering, defendants say that the articles of the constitution above quoted, and that the constitution, taken as a whole, as will be seen by reference to the exhibits to complainant's bill, show that the affairs of the company are to be governed by the will of the majority of the stockholders reasonably exercised, and they aver that there is nothing unreasonable in the desire of the stockholders, with the exception of complainant, that the affairs of the company should not be wound up until this can be done without loss; that when complainant became a member of the company she had to, and in fact did, sign the constitution, and in doing so became subject to its provisions; that it would have been entirely competent for the stockholders, by amendment to the constitution, to have postponed the final settlement of the affairs of the company to any distant date, and complainant would have been bound thereby; and defendants aver that in equity she should be equally bound by the desire of the stockholders that the time of final settlement shall be postponed until the property can be sold without needless sacrifice.

The defendants further say that the officers of the company serve without salary, with the exception of the secretary, who receives a small compensation for his clerical work; that in winding up the affairs of the company they will continue to serve without compensation, and all business transacted by them and all sales of property made by them will be without any expense whatever to the company. They are informed, however, and believe that if this company is placed in the hands of a receiver its affairs cannot be wound up without considerable expense, not to mention the great loss incurred by forcing its property upon the market at public sale.

They are informed that the receiver's commissions alone on the sale of property alleged to be worth twenty-three thousand dollars, if it brings anywhere near its real value,

will amount to upward of one thousand or more dollars. To this must be added the court costs, the costs of advertisement, and the auctioneer's and auditor's fees. Defendants respectfully submit that it would be very unfair for the rights of a majority interest in twenty-three thousand dollars' worth of property, as alleged, to be sacrificed to secure the unreasonable demand of a minority consisting of two shares and a value of three hundred and sixty dollars, and they urge the inequity of forcing a majority to pay costs amounting to many times the whole interest of the complainant against their will and without their consent. They aver that this would permit the complainant to ruthlessly override the interests of her copartners and to dictate to her seventy-three associates, in plain disregard of the provisions of the constitution of the company, to which she subscribed, under which the will of the majority of the members must govern in the administration of the company's affairs.

Further answering, defendants say that the great trouble in disposing of the property of this association has arisen from the fact that during the past four or five years there has been no public demand for unimproved property, and they have been unable to find purchasers for it, as hereinbefore set forth. They state that this difficulty has been overcome by the action of the stockholders at a meeting held on January 28th, 1901, which was largely attended and at which the action was unanimous and harmonious. The stockholders at said meeting authorized the board

23 of directors to dispose of the property of the company at cost price to its members, and to permit purchasing members to use their stock in part payment for the property purchased or in full payment should their interest be of sufficient value. In determining the cost price of the property of the association, not only the amount paid originally for it, but all subsequent costs and taxes, have been taken into account, so that by this method of settlement the company will suffer no loss, but may derive a small profit. The purchasing value of the stock is the amount which has been paid upon it by the member holding it. In pursuance of this authority the board of directors now have propositions for the sale of property of the association with several members.

The value of the property in question amounts in the aggregate to about twelve thousand five hundred dollars, but these propositions cannot be carried to consummation because of the pendency of this suit. Defendants say that they believe that the most, if not all, of the property of the association can be disposed of in this manner. They also believe that this mode of disposition is far more advantageous to complainant and her copartners than a receivership and forced sale, because not only will the costs and expenses and probable loss incident to such a sale be avoided, but that, as the usual terms of judicial sales permit the payment of one-third of the purchase-money in cash and extend the time for payment of the balance for one and two years, the proposed mode of settlement will be much quicker.

In conclusion, the defendants say that the complainant has never been placed in any worse position than that occupied by defendants and the rest of their copartners, who are, like herself, all jointly interested in the welfare and prosperity of the Clerks' Investment Company; that the failure to wind up the affairs of the copartnership has not been antagonistic to but in furtherance of her interests as well as their own.

Defendants further say that the bill of complaint is defective in this respect: that the legal title to the property of the Clerks' Investment Company is vested in James T. Gibbs and Charles H. Franzoni, trustees, and that said Gibbs and Franzoni are not made parties hereto as such trustees.

The defendants, having now fully answered complainant's bill, pray that they may be hence dismissed with their reasonable costs in this behalf sustained.

W. H. BUTLER.
DENNIS W. MAGRATH.
CLARENCE E. LATIMER.
JAMES T. GIBBS.
PERCY METZGER.
WILLIAM H. VEERHOFF.
CHAS. H. FRANZONI.

PERCY METZGER,
Solicitor for Defendants.

DISTRICT OF COLUMBIA, ss:

We do solemnly swear that we have read the answer by us subscribed and know the contents thereof, and that the facts therein stated upon personal knowledge are true, and those stated on information and belief we believe to be true.

W. H. BUTLER.
CLARENCE E. LATIMER.
PERCY METZGER.
DENNIS W. MAGRATH.
JAMES T. GIBBS.
WILLIAM H. VEERHOFF.
CHAS. H. FRANZONI.

Subscribed and sworn to before me this 7th day of March, 1901.

[SEAL.]

VICTOR H. WALLACE,
Notary Public, D. C.

Decree Appointing Trustees.

Filed March 25, 1901.

In the Supreme Court of the District of Columbia.

MARY C. SYDNOR	}	Equity. No. 21827.
vs.		
WILLIAM H. BUTLER ET AL.		

The parties to this cause, by their respective counsel, having, on the twenty-first day of March, 1901, appeared in open court and by mutual agreement submitted this cause for final decree upon the bill and answer, after argument had thereon, and the same
 26 having been fully considered, it is now, this 25th day of March, 1901, ordered, adjudged, and decreed as follows:

1. That the complainant is a shareholder in and part owner of the several lots of land mentioned in the bill of complaint, and that the title thereto is held by the defendants Charles H. Franzoni and James T. Gibbs in trust for all the holders of shares in the voluntary association mentioned in the bill of complaint and known as the Clerks' Investment Company, according to their respective rights, and that the complainant is entitled as such shareholder to have the said several parcels of land sold, the liabilities of said association determined, and the proceeds of such sale distributed under the direction of this court, and such sale is hereby decreed.

2. That for the purpose of making such sale Samuel V. Hayden and Percy Metzger, of counsel for the complainant and defendants respectively, be, and they hereby are, appointed trustees. Said trustees shall, before exercising any authority hereunder, qualify by severally or jointly giving bond, with surety to be approved by the court, conditioned in the penalty of twenty thousand dollars, for the faithful performance of their duties as such trustees. Their course of proceeding shall thereafter be as follows:

They shall proceed to sell the said several parcels of land separately, at public auction, after having advertised the time, places, and terms of such sale in at least one daily newspaper published in the city of Washington, D. C., for ten (10) days before said sale, and giving notice otherwise as they may in their discretion think best, and shall then sell said property to the highest bidder or bidders therefor. The terms of sale shall be as
 27 follows for each parcel of land which they may sell: One-third ($\frac{1}{3}$) of the purchase-money in cash within ten days after the day of sale, and the remainder in equal instalments at one and two years from the day of the confirmation of said sale, with interest at the rate of six per centum (6 %) per annum, secured by deed of trust of the land sold, or all cash, in any case, at the option of the purchaser. A deposit of \$100 on cash parcel sold shall be required

of the purchasers at the time of sale as earnest money. Said trustees shall then report to the court, under oath, their proceedings hereunder for its further action.

By the court:

A. C. BRADLEY, *Justice.*

Petition for Rehearing.

Filed March 29, 1901.

In the Supreme Court of the District of Columbia.

MARY C. SNYDOR, Complainant,	} No. 21827. Equity.
vs.	
WILLIAM H. BUTLER ET AL., Defendants.	

To the supreme court of the District of Columbia, holding an equity court:

The petition of Clerks' Investment Company, William H. Butler, Dennis W. Magrath, Clarence E. Latimer, Jos. C. Ringwalt, 28 James T. Gibbs, Percy Metzger, William Veerhoff, and Chas. H. Franzoni, officers and directors of the Clerks' Investment Company, respectfully shows:

1. That they are the persons named as defendants in the above cause.

2. That the real estate in the bill of complaint described has been conveyed to the defendants Charles H. Franzoni and James T. Gibbs, as trustees, in trust for the following purposes—that is to say, “for the use and benefit of the persons who have contributed to the purchase of said real estate, their respective heirs and assigns, according to their respective interests, subject, however, to and with full power and authority to said trustees, or the survivor, from time to time and at all times in their or his discretion, the said real estate or any part thereof to sell and dispose of the same or any part thereof to convey to such person or persons for such uses and in such quantity or quantities of estate or estates, whether in fee-simple or by way of trust or mortgage, as the said trustees, or the survivor of them, shall or may in their or his discretion deem proper and best for the interests of all parties concerned,” and that the title thereto is still vested in them, subject to the uses and trusts aforesaid.

3. That the interests of each of the persons interested in said real estate, including the complainant, is represented by a certificate from the Clerks' Investment Company, in the form following:

29	No. —.	Shares, —.
----	--------	------------

The Clerks' Investment Co., Washington D. C. ; organized March 22, 1892.

This is to certify that ——— is entitled to — shares of the capital stock of the Clerks' Investment Co., transferable in person

or by attorney on the books of said company only upon the surrender of this certificate.

In witness whereof the said company has caused this certificate to be signed by its president, and its seal to be affixed, attested by the secretary, this — day of —, 189—.

— —, *President.*

— —, *Secretary.*

4. That said Franzoni and Gibbs were selected by the board of managers of the Clerks' Investment Company in the bill described, which said board was fully vested with authority to that end by all the persons interested in said real estate as shareholders or otherwise, including the complainant, as the persons who should make sale of said real estate whenever a sale thereof should be deemed or become necessary, and at the time of their appointment it was understood and agreed that they should serve as such trustees and make sale of said real estate for a nominal compensation of five dollars to each of said trustees for each parcel of said real estate sold, and your petitioners represent that said trustees are able and are still ready and willing, if the court shall require a sale thereof to be made, to make such sale under the direction of the court,
30 without any compensation other than the nominal compensation above suggested.

5. Your petitioners were not informed by their counsel that an application for a receiver had been made herein, nor were they apprised of the fact that the cause would be submitted for final hearing on bill and answer at the time of the hearing of any such motion, and that had they been so apprised and had they anticipated a decree for the sale of said real estate they should have instructed their counsel to request the court to direct a sale of said real estate to be made by said Franzoni and Gibbs, pursuant to the powers vested in them by the deeds of trust aforesaid, under the direction of the court; that if the decree passed herein is permitted to stand without modification in respect to the persons who shall make such sale, or in respect of the compensation to be received by them, your petitioners as individuals and the persons represented by them will be seriously prejudiced and the proceeds of sale needlessly depleted by large costs and expenses, very much in excess of the total amount paid in by the complainant, or to which she would be entitled under any circumstances, even if the real estate should bring sufficient to satisfy and pay in full all persons contributing to its purchase.

6. Your petitioners are advised and represent that said Charles H. Franzoni and James T. Gibbs, in whom is vested as trustees the title to the real estate in the bill described, were not made parties to the complainant's bill in said capacity, and they verily believe that for said reason, and until the defect in the original bill
31 in that regard has been corrected, the defendants should not have or receive any relief whatever in this cause.

7. Your petitioners represent that their sole desire has been and
3—1097A

is now to preserve and protect the assets of the association represented by them for the benefit of all interested therein; that they have served without compensation, and some of your petitioners have from time to time advanced considerable sums out of their own funds without security for the protection of the real estate described in the bill; that they verily believe that if they are afforded a reasonable further time they will be able to make sale of the real estate in the bill described at private sale much more advantageously than could be made at public auction, and that in their opinion it is to the interest of the complainant and of all persons interested therein that a sale at public auction should be avoided, if possible; that the real estate decreed to be sold cost approximately \$25,000, and is wholly unincumbered, and your petitioners verily believe that if sold at public auction under the decree of court at the present time that it will not realize more than \$15,000; that the persons interested therein as shareholders number about 70, and except the complainant have sanctioned and approved the course of these petitioners in their efforts to preserve and care for said property until a sale thereof could be made privately; that it was the understanding and agreement between all parties interested in said association that the wishes of a majority in number and interest therein should control the disposition of the assets of the association, and that it is contrary to the spirit and purposes of

the organization that any one of the persons in interest should
32 be able to require a sale of the whole real estate, and they
aver upon information and belief that the utmost to which
the complainant is entitled is a sale of her interest therein represented by the certificate held by her.

8. Your petitioners verily believe that if the facts herein set forth, and particularly the terms of the trust by which said real estate is held and the nature of the certificate of the complainant, had been set forth in the bill or in the answer herein, that a different result might have been reached and a sale of said real estate avoided.

Wherefore your petitioners pray:

First. That the decree passed herein on the 25th day of March, 1901, directing the sale of the real estate in the bill described may be vacated and set aside and a rehearing granted your petitioners.

Second. That your petitioners may have leave, upon the vacation of said decree, to incorporate therein the matters and things herein set forth.

Third. But if the court shall be of opinion that said decree shall not be vacated, then that the same may be so far modified as to direct the sale of the real estate by the said Charles H. Franzoni and James T. Gibbs, trustees, under the direction of the court, to serve without compensation other than the nominal compensation of five dollars to each of said trustees for each parcel of real estate sold by them, without prejudice to the right of the defendants

33 to appeal from said decree if they shall be so advised.

Fourth. And for such other and further relief as the nature

of the circumstances of the case require and to this honorable court shall seem proper.

WILLIAM H. BUTLER.
JAMES T. GIBBS.
CHAS. H. FRANZONI.

DISTRICT OF COLUMBIA, ss :

William H. Butler, J. T. Gibbs, and Charles H. Franzoni upon oath say that they have read the foregoing petition by them subscribed and know the contents thereof; that the facts therein stated upon personal knowledge are true, and those stated upon information and belief they believe to be true.

WILLIAM H. BUTLER.
JAMES T. GIBBS.
CHAS. H. FRANZONI.

Subscribed and sworn to before me this 29th day of March, 1901.

[SEAL.] F. WALTER BRANDENBURG, JR.,
Notary Public, D. C.

34 *Order Denying Petition for Rehearing.*

Filed April 1, 1901.

In the Supreme Court of the District of Columbia.

MARY C. SYDNOR	}	No. 21827. Equity.
vs.		
WILLIAM H. BUTLER ET AL.		

Upon consideration of the petition of William H. Butler and others, filed herein March 29, 1901, praying that the decree for sale heretofore passed may be vacated and a rehearing allowed and for other relief, it is, this 1st day of April, 1901, ordered that the prayer of said petition be, and the same is, denied.

By the court:

A. C. BRADLEY, *Justice.*

Appeal.

Supreme Court of the District of Columbia.

MARY C. SYDNOR	}	No. 21827.
vs.		
WM. H. BUTLER ET AL.		

Clerk will please enter an appeal on behalf of the defendants to the Court of Appeals from the final decree herein and the order

overruling petition for rehearing, and issue citation to the complainants.

C. A. BRANDENBURG,
Sol'r for Defendants.

April 10, 1901.

Appeal, &c., as ordered, entered.

By CL'K.

1901, 4, 10.

35

Filed Apr. 10, 1901. J. R. Young.

In the Supreme Court of the District of Columbia.

MARY C. SYDNOR	} No. 21827. In Equity.
vs.	
CLERKS' INVESTMENT COMPANY ET AL.	

The President of the United States to Mary C. Sydnor, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 10th day of April, 1901, wherein The Clerks' Investment Company, William H. Butler, Dennis W. Magrath, Clarence E. Latimer, Joseph C. Ringwalt, James T. Gibbs, Percy Metzger, William H. Veerhoff, and Charles H. Franzoni, officers and directors of the Clerks' Investment Company, — appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.	Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this tenth day of April, in the year of our Lord one thousand nine hundred and one.
---	--

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 10th day of April, 1901.

A. A. BIRNEY,
Attorney for Appellee.

36

Memorandum.

April 12, 1901.—Appeal bond filed.

37

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 36, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 21827, equity, wherein Mary C. Sydnor is complainant and The Clerks' Investment Company *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, this 26th day of April,
 Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1097. The Clerks' Investment Company *et al.*, appellants, *vs.* Mary C. Sydnor. Court of Appeals, District of Columbia. Filed May 15, 1901. Robert Willett, clerk.